



Women's Legal
Education and
Action Fund | Fonds d'action et
d'éducation juridiques
pour les femmes

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November 29, 2017

Treasurer Paul Schabas and Benchers of the Law Society of Upper Canada
c/o The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Treasurer Schabas and Law Society Benchers:

Re: Statement of Principles Requirement

The Women's Legal Education and Action Fund (LEAF), a national, equality law organization, writes to express its support for the conclusions and recommendations found in the *Final Report of the Working Group on the Challenges Faced by Racialized Licensees (Challenges Report)*. Further, LEAF supports the Law Society's adoption of Recommendation 3(1), the Statement of Principles requirement, which obliges licensees of the Law Society to acknowledge their obligation to promote equality, diversity and inclusion generally. LEAF therefore urges Convocation to oppose Bencher Joseph Groia's motion that seeks to exempt licensees from the requirement.

LEAF Supports the Law Society's Equity Initiatives

Lawyers in Ontario are obliged to uphold the Ontario *Human Rights Code* and the *Charter of Rights and Freedoms* and should not be entitled to opt out of doing so. The Law Society Rules of Professional Conduct (the "Rules") create a special obligation for lawyers to recognize and honour the principles contained in the *Code* and the *Charter*, creating a particular expectation that lawyers will uphold the principles of equality contained therein. Under the Rules, which bind all members of the Law Society, lawyers have a "special obligation to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario" (Rule 2.1-1 Commentary). Rule 6.3-1 also creates a "special responsibility to respect the requirements of human rights laws in force in Ontario, and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the *Ontario Human Rights Code*), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person." The Rules contain other obligations consistent with Recommendation 3(1), including lawyers' obligation to "encourage public respect for and try to improve the administration of justice" (Rule 5.6-1). Equality is fundamental to improving the administration of justice. Requiring lawyers to promote equality and diversity is consistent with the pre-existing obligations imposed on lawyers under the Rules.

It is well-documented that women, Indigenous people, racialized groups, sexual minorities and people with disabilities are underrepresented in the legal profession, particularly in the most senior legal positions. This inequality of representation does not occur in a vacuum. It is the product of systemic factors interfering with access to legal training and employment and of individual decision-making on the part of legal employers.

Concrete Steps are Necessary to Address Discrimination

The problem of under-representation of equality-seeking groups, particularly racialized groups, will not be solved without members of the legal profession taking concrete steps to do so. LEAF concurs with the Canadian Association of Black Lawyers' statement in its November 3, 2017 letter to the Law Society on this matter that: "Issues of systemic discrimination and unconscious bias can only be challenged if the regulator has the inner fortitude to address systemic problems head on, whether the remedy is popular or not among licensees generally." LEAF is pleased that the Law Society is taking concrete steps to address these systemic and individual factors and to require legal employers to engage diversity and equality as a fundamental component of their employment practices. As argued in our joint factum in a recent Supreme Court appeal, *Attorney General of Québec v. Alliance du personnel professionnel et technique de la santé et des services sociaux, et al.*, "it takes active intervention to maintain equality in the face of systemic discrimination."

To the extent that critics of Recommendation 3(1) say that it interferes with freedom of speech or conscience, that right must be balanced against the *Charter* right to equality, which includes the right to be free from systemic discrimination. LEAF asserts that the *Charter* right to equality must inform the interpretation of other *Charter* rights and values. The problem of under-representation of equality-seeking groups in the legal profession has a tangible impact on equality of access to employment opportunities, equality of access to informed and culturally appropriate legal services, and on the Court's access to legal arguments informed by the experiences of all Canadians. These tangible problems, their impact on systemic inequality, and their need for a substantive solution must inform any analysis of Mr. Groia's resolution.

LEAF applauds the Law Society's Working Group for the time and effort they devoted to documenting and exposing the longstanding problems facing racialized licensees in Ontario, and to identifying concrete strategies to address issues of systemic racism. LEAF notes that the multi-year consultation process that produced the Report resulted in a fulsome discussion at the December 2016 Convocation. After lengthy consultation and considerable debate, the Law Society adopted the Report Recommendations. LEAF is heartened by the Law Society's recent reiteration of the need for the measures recommended by the Working Group and approved at Convocation last year. The objections now raised by Mr. Groia and others are an unfortunate attempt to walk back the decisions made in 2016. LEAF calls on all members of Convocation to demonstrate their commitment to overcoming systemic discrimination in the legal profession and to reject Mr. Groia's motion.

All of which is respectfully submitted,

Women's Legal Education and Action Fund